



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NYERI  
CORAM: SHAH, J.A. (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI 177 OF 2000

**BETWEEN**

NYAKIO COMPANY  
LIMITED ..... APPLICANT

AND

GEOFFREY MARANGA KAIRU

JOHN MWANU NJUGI

WANGOMBE NJOGU

KAMOTHO MUCHEMI KABATI

APOLLO MBOGO MUGAMBI

MARTIN MURIITHI MUTONGU

IBANGUA INVESTMENT COMPANY  
LIMITED ..... RESPONDENTS

(Application for extension of time in an intended appeal  
from a ruling of the High Court of Kenya at Nyeri  
(Osiemo J) dated 27th November, 1996

in

H.C.C.C. NO. 279 OF 1996)

\*\*\*\*\*

**RULING**

I am told that two of the respondents to this appeal are dead. They are **John Mwanu Ngugi** and **Geoffrey Maranga Kairu**, that is, the second and first respondents respectively. I am also told that they "passed away" after the delivery of the ruling which the applicant seeks to appeal against.

The application before me is filed by the applicant, Nyakio Pig Company Limited, a limited liability company. The remaining five respondents are objecting to the application on the ground, inter alia, that as the said two respondents are dead, the intended appeal will not serve any purpose. Rule 83 of the Rules of this Court provides:

"83(1)An appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of his legal representative.

(2)An appeal shall not be incompetent by reason only that the respondent was dead at t he time when it was instituted but the court, shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased."

In the absence of substitution of the legal representative of the two deceased "respondents" , I cannot hear this application. The order that commends itself to me at this stage is that the interested party (in this case the applicant) ought to apply to the Court for such substitution.

Pending the filing, hearing and determination of the application for substitution, the hearing of this application is stood over generally.

As the matter appears to be of some importance I direct that the application for substitution be heard at Nairobi.

Costs so far occasioned are hereby reserved.

Dated and delivered at Nyeri this 25th day of October, 2000.

A. B. SHAH

-----

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR